

ENTERED

March 28, 2018

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

WILLIAM GERALD FITZGERALD,

Plaintiff,

VS.

HARRIS COUNTY SHERIFFS OFFICE, *et al*,

Defendants.

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CIVIL ACTION NO. H-15-1330

ENTRY OF DEFAULT AND NOTICE OF HEARING

Plaintiff William Gerald Fitzgerald (TDCJ # 1860537), a state inmate proceeding *pro se* and *in forma pauperis*, filed a civil rights complaint under 42 U.S.C. § 1983 alleging use of excessive force in violation of the Eighth Amendment. Docket Entry No. 1. On August 15, 2017, the Court dismissed all defendants except Myron Nelson. Docket Entry No. 56. Nelson, who was personally served by a Deputy United States Marshal on August 23, 2016 (Docket Entry No. 30 [**under seal**]), has not filed an answer and his time to do so has expired. *See* Fed. R. Civ. P. 12(a). Fitzgerald has now filed a Motion for Default Judgment (Docket Entry No. 63), and he has filed an affidavit requesting compensatory damages of **\$250,000**, further compensatory damages of **\$5,000**, and punitive damages of **\$1 Million**. *See* Docket Entry No. 64 at 3-4.

On December 15, 2017, the Court ordered Nelson to show cause why default should not be entered against him. *See* Docket Entry No. 66. To date, despite the Court's repeated warnings that failing to file a timely response would likely result in entry of a default judgment, Nelson has filed no response. Nelson's failure to make an appearance has rendered him subject to default. *See* FED. R. CIV. P. 12(a)(1), 55(a); *Rogers v. Hartford Life and Acc. Ins. Co.*, 167

F.3d 933, 937 (5th Cir. 1999); *New York Life Ins. Co. v. Brown*, 84 F.3d 137, 141 (5th Cir. 1996).

Accordingly, the Court **ORDERS** as follows:

1. Plaintiff's motion for default judgment (Docket Entry No. 63) is **GRANTED**.
2. **DEFAULT IS ENTERED** against Defendant Myron Nelson pursuant to Federal Rule of Civil Procedure 55(a).
3. A hearing to determine damages will be held on:

Wednesday, April 18, 2018

10:00 a.m.

Courtroom Number 9C before Judge Melinda Harmon

Bob Casey Federal Courthouse

515 Rusk Street

Houston, TX 77002

4. At the hearing, Plaintiff shall present his evidence and testimony, and Defendant Nelson will have an opportunity to rebut the evidence.

The Clerk shall send a copy of this Order to the parties, and a copy of this Entry of Default and Notice of Hearing to Defendant Myron Nelson at his address under seal, by certified mail, return receipt requested.

SIGNED at Houston, Texas, this 28th day of March, 2018.



MELINDA HARMON
UNITED STATES DISTRICT JUDGE